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7 Attorneys for the Arizona State Board of Pharmacy

8  
9 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

10 In the Matter of

11 **PRAKESH SHAH,**

12 Holder of License No. S013768  
As a Pharmacist  
13 In the State of Arizona

Board Case No. 09-0011-PHR

**CONSENT AGREEMENT  
FOR CIVIL PENALTY**

14  
15 **RECITALS**

16 In the interest of a prompt and judicious settlement of this case, consistent with the  
17 public interest, statutory requirements and the responsibilities of the Arizona State Board  
18 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Prakesh Shah ("Respondent"),  
19 holder of Pharmacist License Number S013768 in the State of Arizona, and the Board  
20 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order  
21 ("Consent Agreement") as a final disposition of this matter.

22 1. Respondent has read and understands this Consent Agreement and has had  
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the  
24 opportunity to discuss this Consent Agreement with an attorney.  
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1           2.     Respondent understands that he has a right to a public administrative  
2 hearing concerning the above-captioned matter, at which hearing he could present  
3 evidence and cross examine witnesses. By entering into this Consent Agreement,  
4 Respondent knowingly and voluntarily relinquishes all right to such an administrative  
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or  
6 any other administrative and/or judicial action, concerning the matters set forth herein.

7           3.     Respondent affirmatively agrees that this Consent Agreement shall be  
8 irrevocable.

9           4.     Respondent understands that this Consent Agreement or any part of the  
10 agreement may be considered in any future disciplinary action by the Board against him.

11          5.     Respondent understands this Consent Agreement deals with Board  
12 Complaint No. 3540 involving allegations of unprofessional conduct against Respondent.  
13 The investigation into these allegations against Respondent shall be concluded upon the  
14 Board's adoption of this Consent Agreement.

15          6.     Respondent understands that this Consent Agreement does not constitute a  
16 dismissal or resolution of any other matters currently pending before the Board, if any,  
17 and does not constitute any waiver, express or implied, of the Board's statutory authority  
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19          7.     Respondent also understands that acceptance of this Consent Agreement  
20 does not preclude any other agency, subdivision, or officer of this State from instituting  
21 any other civil or criminal proceedings with respect to the conduct that is the subject of  
22 this Consent Agreement.

23          8.     Respondent acknowledges and agrees that, upon signing this Consent  
24 Agreement and returning this document to the Board's Executive Director, he may not  
25 revoke his acceptance of the Consent Agreement or make any modifications to the  
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1 document regardless of whether the Consent Agreement has been signed by the  
2 Executive Director. Any modification to this original document is ineffective and void  
3 unless mutually agreed by the parties in writing.

4 9. Respondent understands that the Consent Agreement shall not become  
5 effective unless and until adopted by the Board and signed by its Executive Director.

6 10. If a court of competent jurisdiction rules that any part of this Consent  
7 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
8 shall remain in full force and effect.

9 11. Respondent understands and agrees that if the Board does not adopt this  
10 Consent Agreement, he will not assert as a defense that the Board's consideration of this  
11 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

12 12. Respondent understands that this Consent Agreement is a public record that  
13 may be publicly disseminated as a formal action of the Board and may be reported as  
14 required by law to the National Practitioner Data Bank and the Healthcare Integrity and  
15 Protection Data Bank.

16 13. Respondent understands that any violation of this Consent Agreement  
17 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-  
18 1901.01(B)(20), -1927(A)(1).

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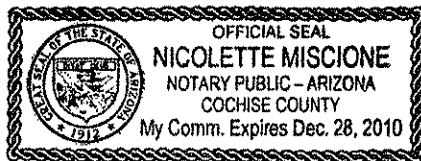
26

1 ACCEPTED AND AGREED BY RESPONDENT

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3 Prakesh Shah  
4 Prakesh Shah

Dated: 11/3/2008

5 Subscribed and sworn to before me in the County of Cochise, State of Arizona,  
6 this 3 day of November, 2008, by Prakesh Shah.



9  
10 Nicolette Miscione  
11 NOTARY PUBLIC

12 My Commission expires: Dec 28, 2010

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**FINDINGS OF FACT**

1. The Board is the duly constituted authority for licensing and regulating the practice of pharmacy in the State of Arizona.

2. Respondent is the holder of license number S013768 to practice as a pharmacist in the State of Arizona.

3. During all times relevant to these Findings, Respondent worked as a pharmacist at CVS Pharmacy #9278 in Yuma, Arizona (the "Pharmacy").

4. In February 2008, the Pharmacy terminated Respondent for refilling prescriptions without physician authorization and failing to completely fill a prescription for a CII medication within 72 hours.

5. Respondent refilled the following prescription-only medications without physician authorization:

<u>Medication</u>	<u>Date of Unauthorized Refill</u>
Med. Klor-Con M20 #30	10/10/07
Med. Hydrochlorothiazide	11/23/07
Med. Klor-Con M20 #30	11/23/07
Fluticasone 50 mcg Nasal Spray	11/20/07
Fluticasone 50 mcg Nasal Spray	6/5/07
Femara 2.5 mg	9/15/08
Softclix Lancets #100	11/25/07
Accu-Chek CMFRT CUSVE	9/17/07
Thrazosin 2 mg	4/9/07
Metformin 1000 mg #60	9/17/07
Metformin 1000 mg #60	10/29/07
Metformin 1000 mg #60	11/25/07

6. In addition, Respondent partially filled a prescription for 60 tablets of Ritalin LA (methylphenidate) 20 mg with 35 tablets on 1/4/08 and 25 tablets on 1/8/08.

7. Methylphenidate is a schedule II controlled substance. A.R.S. § 36-2513(3)(d).

### CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter and over Respondent pursuant to A.R.S. § 32-1901 *et seq.*

1           2.     The Board may discipline a pharmacist who has engaged in unprofessional  
2 conduct. A.R.S. § 32-1927(A)(1).

3           3.     The conduct and circumstances described above constitutes unprofessional  
4 conduct pursuant to A.R.S. § 32-1901.01(B)(2) (Violating any federal or state law, rule or  
5 regulation relating to the manufacture or distribution of drugs and devices or the practice  
6 of pharmacy).

7           4.     The conduct and circumstances described above constitute unprofessional  
8 conduct pursuant to A.R.S. § 32-1901.01(B)(10) (Violating a federal or state law or  
9 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous  
10 drugs, controlled substances or precursor chemicals when determined by the board or by  
11 conviction in a federal or state court).

12          5.     Respondent's practice and conduct, as described in the Findings of Fact,  
13 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(11) ("Knowingly  
14 dispensing a drug without a valid prescription order as required pursuant to section 32-  
15 1968, subsection A.").

16          6.     Respondent's conduct as described in the Findings of Fact constitutes a  
17 violation of A.R.S. § 32-1968(A) ("A prescription-only drug shall be dispensed only  
18 under one of the following conditions: (1) By a medical practitioner in conformance with  
19 A.R.S. § 32-1921; (2) On a written prescription order bearing the prescribing medical  
20 practitioner's manual signature; (3) On an electronically transmitted prescription order  
21 containing the prescribing medical practitioner's electronic or digital signature that is  
22 reduced promptly to writing and filed by the pharmacist; (4) On a written prescription  
23 order generated from electronic media containing the prescribing medical practitioner's  
24 electronic or manual signature. A prescription order that contains only an electronic  
25 signature must be applied to paper that uses security features that will ensure the  
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1 prescription order is not subject to any form of copying or alteration; (5) On an oral  
2 prescription order that is reduced promptly to writing and filed by the pharmacist; (6) By  
3 refilling any written, electronically transmitted or oral prescription order if a refill is  
4 authorized by the prescriber either in the original prescription order, by an electronically  
5 transmitted refill order that is documented promptly and filed by the pharmacist or by an  
6 oral refill order that is documented promptly and filed by the pharmacist.”).

7 7. Respondent’s conduct as described in the Findings of Fact constitutes a  
8 violation of 21 C.F.R. § 1306.13(a) (The partial filling of a prescription for a controlled  
9 substance listed in Schedule II is permissible. The remaining portion of the prescription  
10 may be filled within 72 hours of the first partial filling. No further quantity may be  
11 supplied beyond 72 hours without a new prescription.).

### 12 ORDER

13 Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY  
14 ORDERED THAT:

15 1. Respondent’s pharmacist’s license number S013768 is placed on  
16 PROBATION for a one-year period beginning on the effective date of this Order.

17 2. Respondent shall pay a civil penalty of \$6,000.00 within six (6) months of  
18 the effective date of this Order.

19 3. Within ninety (90) days of the effective date of this Order, Respondent  
20 shall successfully take and pass the MPJE. Respondent must promptly supply proof of  
21 successful completion of the MPJE to the Board.

1 DATED this 18<sup>th</sup> day of November, 2008.

3 ARIZONA STATE BOARD OF PHARMACY

4 (Seal)

6 By:



HAL WAND, R.Ph.  
Executive Director

8 ORIGINAL OF THE FORGOING FILED  
9 this 18 day of Novem, 2008, with:

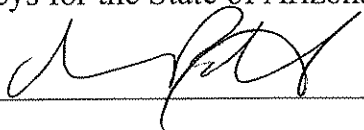
10 Arizona State Board of Pharmacy  
1700 West Washington, Suite 250  
11 Phoenix, Arizona 85007

12 EXECUTED COPY OF THE FOREGOING MAILED  
BY CERTIFIED MAIL  
13 this 18 day of Novem, 2008, to:

14 Prakesh Shah  
8632 E. 26<sup>th</sup> Place  
15 Yuma, Arizona 85365  
Respondent

16 EXECUTED COPY OF THE FOREGOING MAILED  
17 this 18 day of Novem, 2008, to:

18 Elizabeth A. Campbell  
Assistant Attorney General  
19 1275 W. Washington Street, CIV/LES  
Phoenix, Arizona 85007  
20 Attorneys for the State of Arizona



22 #313622